



305 BROADWAY  
SUITE 700  
NEW YORK, NY 10007  
212 682 1853  
212 682 1892 FAX  
gfrank@frankllp.com  
www.frankllp.com

June 1, 2021

**VIA ECF**

Hon. Paul G. Gardephe, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2204  
New York, NY 10007

Re: Michelo et al. v. Nat'l Collegiate Student Loan Trust 2007-2 et al., 18-CV-1781  
Bifulco et al. v. Nat'l Collegiate Student Loan Trust 2004-2 et al., 18-CV-7692

Dear Judge Gardephe:

We represent Plaintiffs in the above-referenced cases, and write concerning TSI's recently filed brief styled as a "reply" in support of TSI's objections to Magistrate Judge Moses's April 23, 2021 Order ("TSI's Brief").<sup>1</sup>

"[G]iven that Fed. R. Civ. P. 72(b)(2) authorizes only objections and a response, not a reply, to a magistrate judge's report and because [TSI] never sought leave of the Court to file these papers," this Court should strike TSI's Brief without considering it. *Mordukhaev v. Daus*, No. 09-cv-5149, 2010 U.S. Dist. LEXIS 102138, at \*3 n.1 (S.D.N.Y. Sept. 28, 2010) (Stein, J.), aff'd, 457 F. App'x 16 (2d Cir. 2012).

Notwithstanding this, TSI accuses Plaintiffs of not having sought to schedule Affiant X's deposition in a timely manner. (TSI Br., at 5). This is false. At the Court's request, Plaintiffs' counsel can produce voluminous materials evidencing Plaintiffs' attempt to enforce their July 17, 2020 deposition subpoena to Affiant X. Judge Moses is well aware of these facts and TSI's continued misrepresentations.

Respectfully submitted,

/s/ Gregory A. Frank

---

<sup>1</sup> TSI's Brief was filed at: Dkt. No. 310 in Case No. 18-cv-1781; and Dkt. No. 238 in Case No. 18-cv-7692.